

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADONIS ALEXANDER FRYE,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2010

No. 288444

Washtenaw Circuit Court

LC No. 07-002249-FC

Before: Davis, P.J., and Donofrio and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for second-degree murder, MCL 750.317, carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

Defendant first argues that the trial court abused its discretion when it admitted the certified record of defendant's conviction into evidence. Defendant offered to stipulate to his ineligibility to possess a firearm under MCL 750.224f based on a prior felony conviction. This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). A trial court abuses its discretion when its decision "results in an outcome that is outside of a principled range of outcomes." *People v Breeding*, 284 Mich App 471, 479; 772 NW2d 810 (2009). Errors in the admission of evidence are nonconstitutional. *People v Blackmon*, 280 Mich App 253, 259; 761 NW2d 172 (2008). Nonconstitutional errors that are preserved will not result in a reversal of a conviction unless it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999).

MCL 750.224f requires evidence of a conviction of a felony or specified felony to satisfy the element that a defendant be ineligible to possess a firearm. When a defendant offers to stipulate that he is ineligible to possess a firearm and that the ineligibility is the result of a felony conviction, no other information is necessary to establish this element of the offense. The introduction of evidence of the specific crime for which a defendant was convicted "carries a risk of unfair prejudice to the defendant." *Old Chief v United States*, 519 US 172; 117 S Ct 644; 136 L Ed 2d 574 (1997). This risk of prejudice outweighs the probative value of the evidence, and admission of this type of evidence is precluded by MRE 403. *People v Swint*, 225 Mich App 353, 379; 572 NW2d 666 (1997). The presentation of defendant's conviction for delivery of

marijuana subjected him to the potential for unfair prejudice while offering nothing in the way of probative value. The trial court's decision to admit the record of defendant's conviction was thus an abuse of discretion.

While the trial court's decision to admit defendant's record of conviction was an abuse of discretion, the nonconstitutional error was harmless. The prosecutor presented substantial evidence to support the jury's guilty verdict for second-degree murder. The admission of defendant's record of conviction for delivery of marijuana was not outcome determinative in light of the overwhelming evidence of defendant's guilt. Defendant and defendant's girlfriend both testified that defendant shot the victim. Numerous other witnesses either saw defendant shoot the victim or saw defendant flee the scene in the aftermath of the shooting. Defendant's theory on defense was that he acted in self-defense. This theory did not rest on whether defendant had been convicted of delivery of marijuana. The deceased's girlfriend, Benisa Anderson, offered the only other testimony concerning marijuana. Anderson testified that defendant had a conversation with the deceased in which the deceased threatened to impede defendant's ability to sell marijuana on the streets. She also testified that defendant had admitted his involvement in the marijuana trade. It is entirely possible that the jury considered this testimony in weighing the issue of whether self-defense or protection of his business interest was the reason for defendant shooting the deceased. However, the testimony on the crucial issue of whether defendant was under an immediate threat of harm was thin, at best. While there was testimony that the deceased was violent and was known to carry a gun, only defendant offered any testimony that the deceased had what appeared to be a weapon in his belt when he was shot. The jury convicted defendant despite his testimony relating to self-defense, and it is not more probable than not that the erroneous admission of defendant's record of conviction was the determining factor in the guilty verdict. Accordingly, we find that the error was harmless.

Defendant next argues that the prosecutor committed misconduct by allowing police detectives to testify falsely about the victim's gang membership and about the contents of documents defendant unsuccessfully attempted to admit into evidence. We disagree.

In order to preserve a claim of prosecutorial misconduct for appellate review, a defendant must make a timely and specific objection. *People v Barber*, 255 Mich App 288, 296; 659 NW2d 674 (2003). Defendant failed to object to any of the police testimony. Therefore, our review is for plain error. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). Claims of prosecutorial misconduct are reviewed de novo to determine if the defendant was denied a fair trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004). Under plain error review, this Court reviews whether: "1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), citing *United States v Olano*, 507 US 725; 113 S Ct 1770; 123 L Ed 2d 508 (1993). Reversal is required only when the plain error resulted in the conviction of an innocent person, or seriously affected the fairness, integrity, or public reputation of the proceedings. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

Defendant alleges that police detectives committed perjury when they denied knowledge of the victim's involvement in the All Out Boys gang. Defendant offers only inferential evidence to support his claim. Defendant offers the testimony of defendant and defendant's brother that the victim was a member of the gang. Additionally, defendant offered several papers bearing the fax number and letterhead of the Washtenaw Sheriff's Department concerning

gang activity in the area to impeach the testimony of the officer who denied any knowledge of gang activity. The trial court did not receive as evidence the document that defendant used to impeach the detectives about this knowledge, and defendant impermissibly expanded the trial court record by including that document as substantive evidence in his brief to this Court. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). The jurors received the impeachment testimony and either rejected it or found that it did not impact the evidence bearing on defendant's guilt. To the extent that the document was referenced on the record, there is nothing to indicate that the police detectives testified falsely about its contents or its origination. The inconsistency within the detective's testimony in response to the few questions posed about gang activity do not support a finding that either the testimony was intentional and patently false or that the prosecutor had any obligation to act. Because there is no evidence that the detectives testified falsely, the prosecutor had no false testimony to correct and therefore did not commit prosecutorial misconduct. There was no error and defendant was not denied a fair trial.

Defendant next argues that the prosecutor again committed misconduct when he failed to correct the perjured testimony of Ronald Studebaker. Defendant argues that after the prosecutor allowed Studebaker to testify falsely, the prosecutor then bolstered Studebaker's false testimony through his cross examination of the former deputy sheriff who interviewed Studebaker at the scene of the murder. Defendant has failed to substantiate his claim that any of Studebaker's testimony was false or that any of the prosecutor's actions constituted misconduct. In fact, an examination of the record indicates that Studebaker's testimony was consistent with the testimony of the other eyewitnesses to the murder. Defendant's claim of perjury and prosecutorial misconduct is without merit.

Defendant's final argument is that the trial court denied defendant his right to present a defense when it excluded testimony by defendant's brother, Antoine Frye. We disagree.

We review a trial court's decision to admit or exclude evidence for an abuse of discretion, and review de novo whether a defendant was denied his right to present a defense. *People v Steele*, 283 Mich App 472, 478; 769 NW2d 256 (2009). When a trial court limits a witness's testimony, the aggrieved party must "make an adequate offer of proof that identified what relevant evidence he was unable to present or what issues he was unable to adequately explore because of the trial court's limitation." *People v McPherson*, 263 Mich App 124, 137; 687 NW2d 370 (2004). Defendant failed to make an offer of proof about Antoine's testimony that was precluded. Review is therefore limited to plain error that affected defendant's substantial rights. *Id.* at 138.

The trial court did not abuse its discretion when it excluded the proposed testimony. Defendant's failure to make an offer of proof has left no way for this Court to determine whether the proposed testimony was admissible under any of the Michigan Rules of Evidence. Assuming without deciding that the proposed testimony was somehow admissible, however, we still find that the trial court did not abuse its discretion in excluding it.

When a defendant charged with murder claims self-defense, the alleged victim's character trait for violence is an "important element" in the self-defense claim, and specific instances of the victim's violent conduct may be offered as proof. *People v Harris*, 458 Mich 310, 316; 583 NW2d 680 (1998). A trial court must allow some evidence of a homicide victim's character trait for violence, but the trial court has discretion in deciding how much of that

evidence to admit. *People v Taylor*, 195 Mich App 57, 61; 489 NW2d 99 (1992). The trial court allowed evidence of the victim's character trait for violence under MRE 404 and MRE 405. The trial court allowed testimony about the victim's reputation for violence as well as evidence of specific instances of the victim's violent conduct. The exclusion of the one piece of evidence did not deny defendant the opportunity to present a defense in light of all of the other evidence relevant to his defense that was allowed by the trial court. We find that the trial court did not abuse its discretion. Because the trial court did not abuse its discretion, there was no error, and defendant's claim fails.

Affirmed.

/s/ Pat M. Donofrio

/s/ Cynthia Diane Stephens